A Century of Integrity

MANITOBA JUSTICE 1870 - 1970

Manitoba
Building for the Future

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Forward

Sometimes it is difficult to know where you will be going in the future unless you have some sense of where you have been in the past and why. And so it is with organizations, including Manitoba Justice.

Until now, what is known about the work of the department in its first 100 years of existence was somewhat challenging to find. Information is scattered throughout a few articles and textbooks concerning the legal system in Manitoba. I think the time has come to prepare an essay focusing on the work of the department, the issues it has dealt with, the people who dealt with them and how that work fits into the broader context of government and the province of Manitoba.

The research and writing for this project were undertaken during the summer and fall of 1999 by Jon Woolley, who had just graduated in honours history from the University of Winnipeg. Jon came highly recommended by his professors and, with a twist of irony that can only serve to help the project, he moved in 1999 from his history studies into the Faculty of Law at the University of Manitoba to begin legal training.

From the first day that I met Jon, he made it clear to me that the description of a historical event ought to be interesting and enjoyable to read. He certainly achieved that objective: Jon's style is colourful, and on occasion provocative. He has provided us with a glimpse into some of the issues that the department has wrestled with over the years and has placed them into the context of what was occurring in the province, if not the country, during that time.

I would like to take this opportunity to thank Jon Woolley for the time he spent on this project and for the contribution he has made. His work allows us to better understand where we have been--and why we are who we are.

Bruce A. MacFarlane, Q.C.
Deputy Minister of Justice
and Deputy Attorney General
for the Province of Manitoba

Preface

In late April of 1999, I was hired by Manitoba Justice to write a history of the department. The project itself was given a wide definition. The department wanted a general history of its activities, but not a day-to-day chronicle of its affairs. The project was to focus on the personalities and issues that have affected both the department and the public. The prospect of covering 100 years in the life of a government department was intimidating; however, as my research began, the stories encapsulated in the department's archives began to flow out. What follows is by no means an exhaustive history of the department, but rather an examination of the key personalities and issues that were instrumental in shaping the administration of justice in this province.

I have tried to include a good cross-section of the department – the admirable, the regrettable and even some of the abnormal. It is my hope that this paper may serve as a starting point for others interested in continuing historical research into this truly rich vein of Manitoba's history.

It would be unforgivable to proceed without first acknowledging some of the many people who have helped so much in making this paper a reality. First and foremost, I would like to thank Jock Bates who served as the editor for the project. His suggestions were extremely helpful and his contributions have greatly improved the quality and clarity of this work. I am grateful to the entire staff at Provincial Archives who were both friendly and helpful. I'd also like to thank Chantal Berard for her wonderful administrative support throughout the project and Mary Humphrey for her editorial and moral support. Lee Crawford, Michelle Gange and Eileen O'Donnell from Communications Services Manitoba were also of assistance.

My greatest thanks go to Deputy Attorney General Bruce MacFarlane. From my initial interview through to completion, he was instrumental in the crafting of this project. Not only did he clear obstacles that were in the way, he provided valuable editorial advice and enthusiastic support throughout the process.

Jon Woolley
Author

CHAPTER 1

Justice in the Red River Settlement to 1870

For centuries before the coming of European explorers and traders, the Aboriginal peoples of Western Canada had a distinctive system of justice, based largely on notions of healing and restoration. The first substantive step in the development of a specifically Manitoba justice system came after 1670, with the establishment of the Hudson's Bay Company (HBC) monopoly in Rupert's Land, a huge territory extending from the Rocky Mountains almost to the Atlantic coast. King Charles II handed over this massive territory to HBC to govern as it saw fit and the administration of justice was left to the company's governors.

Since the only European settlements for many years were the HBC's trading posts, it was only at and near these posts that the company administered any form of justice in Rupert's Land. However, the need for a more systematic administration of justice began to increase with the establishment of the Red River Settlement in 1812 by Lord Selkirk. The growth of the colony meant a greater need for a formal system of law and order. A Sheriff of Assiniboia (Red River) was appointed in 1816 and two constables performed light duties between 1823 and 1834. Justice was administered by one justice of the peace. This reflected the lack of professional legal skills in Red River and the status of the colony as being under the jurisdiction of Selkirk and his heirs, not the company.

However, the Red River settlers were influenced by and adopted some of the Aboriginal justice practices. In contrast to the courts of Assiniboia, Aboriginal justice was based not on courts and punishment, but on re-establishing good relations between the victim and the offender. As writer Robert A. Baker noted, "Order from above gave way to order from below. The company directors refused to meddle with an institutional system that they believed brought order to the wilderness."

In 1834, the heirs of Selkirk returned the territory granted him back to the HBC. The following year, the Governor of Rupert's Land, Sir George Simpson, established a

new system of courts and policing. It gave a more formal, consistent structure to justice in the settlement, which now had 3,679 people. The Red River Settlement was divided into four judicial districts, each having a court presided over by a magistrate or justice of the peace. Cases of a more serious nature were heard by a general quarterly court, consisting of the governor and his council.

Simpson and his advisers believed that the company needed someone with legal training residing in the settlement. Accordingly, Simpson created the position of recorder of Rupert's Land and chose Adam Thom, a Scot from Montreal, to fill the position. As a judicial officer, Thom was the antithesis of what the settlement had been used to. Instead of placing emphasis on conciliation of the affected parties, Thom enjoyed the adversarial style of justice that had developed under the common law of England. He was also a loyal servant of the HBC and of Simpson himself, who made Thom's responsibilities very clear: "You shall not devote any portion of your time or attention to any occupation that might be prejudicial to the interests of the Hudson's Bay Company."

In addition to his courtroom talents, Thom had the ability to infuriate almost everyone in Red River. He disliked the French, Roman Catholics and Aboriginal people, including the Metis. Thom's ardent prejudice was evident in the way he ran his court. He refused to use French in court. His verdict in the murder trial of an Indian in 1845 resulted in the first execution in the colony. Only months later, a white man who had pleaded guilty to the murder of an Aboriginal woman was let off with a fine. Eventually, Thom succeeded in alienating the vast majority of people in his jurisdiction. By 1851, Simpson had received several petitions against Thom from Red River citizens. Thom's conduct and verdict in a defamatory conspiracy case moved Simpson to remove him from office, although he remained in the settlement as clerk of the court until 1854.

Thom's successor was Francis G. Johnson, a Montreal lawyer mourning the death of his wife who came to the Red River settlement for a new start. Though appointed in 1854, Johnson had been under consideration for the recorder's position since 1851. As a bilingual lawyer at home in both language cultures of Montreal, he must have seemed like a proverbial oasis in the judicial desert of Red River. Johnson's tenure as recorder was marked by increasingly better relations with French-speaking residents, who had been so alienated by Thom. In 1855, Johnson assumed the additional post of

governor of Assiniboia and gave the French community increased representation on the Council of Assiniboia. No significant changes were made in court procedures, except that the judgments appeared to be less severe. Johnson left his posts in 1858 and was appointed a judge in Montreal in 1865. He returned after the founding of Manitoba to serve as recorder again and help the new province establish its system of justice.

From 1858 to 1861, the post of recorder was filled by Dr. John Bunn, a doctor, lawyer and local official. Bunn, who was never formally appointed, died in 1861. His successor, John Black, began his duties a year later. Black was well-travelled. Born in Scotland, he moved to Red River in 1839 to assist Thom; he returned to Scotland in 1854 but soon settled in Australia. Offered the position of recorder, he responded immediately, arriving in Red River in the spring of 1862. Black pursued a moderate course and, although wishing to resign in 1868, was persuaded to remain in his post. He played a role in the events of the Red River Resistance in 1869-70 as acting governor and was one of the delegates sent to Ottawa to negotiate the entry of Red River into Confederation. He did not return to Manitoba, but retired to Scotland.

One common point about the years of service of Johnson, Bunn and Black was that they did not produce any significant change in the administration of justice in Rupert's Land. The nature of the court adjusted with each new recorder, but the fundamental structure of the system remained the same. However, the conditions governing the existence of Red River, in its isolation from major settlement in both Canada and the United States, were changing quickly. When the Confederation of Canada was achieved in 1867, Rupert's Land was thrown into uncertainty. With the effective loss of the Hudson's Bay Company trading monopoly, the company and the local Council of Assiniboia had virtually lost their hold of government on Rupert's Land. Canada sought to acquire title to the company's vast territories, and opened negotiations with the HBC. Little account was taken of the rights of the inhabitants of Red River. Many saw the imminent Canadian takeover as a threat to their traditional customs and land-use rights. When Canadian surveyors appeared at Red River in the summer of 1869, the spectre of a rush of Anglo-Canadian settlers and loss of their rights caused intense unease, particularly among the French-speaking Metis.

It is an interesting irony that the greatest of events can start in the smallest of beginnings. When Louis Riel and eighteen unarmed men stopped a Canadian survey team near present-day Fort Whyte, they started a series of steps that led to the creation of Manitoba out of the Red River Settlement. With so many groups involved (French and English Metis, Canadian settlers, the Canadian government, the HBC, a pro-American party, U.S. officials and the Imperial government), the process could be likened to a potluck meal, with everyone bringing a different dish to the table. Although a provisional government was established in the wake of the stopping of the surveys, Recorder John Black presided over his court as late as November 1869.

After many meetings and much debate during the winter of 1869-70, the provisional government, led by Louis Riel, initiated the preparation of rights and conditions for the entry of Red River into Confederation. Three delegates (including Black) travelled to Ottawa in March and April 1870. After negotiations lasting little more than a week, the Red River delegates reached agreement with the Canadian government on May 2. *The Manitoba Act*, embodying the agreement, was passed by Parliament on May 12, 1870 and the new province of Manitoba entered confederation on July 15, 1870.

Already, however, a military expedition led by Col. Garnet Wolseley (a British officer), was on its way to Red River to restore law and order. The expedition was made up largely of Protestant volunteers from the Ontario militia, who harboured a strong dislike of Riel and the provisional government. Although an amnesty for Riel and his actions had been agreed to in Ottawa, it had never been formally granted. As the expedition reached Point Douglas, just north of Upper Fort Garry, on August 24, 1870, Riel was warned that his life was in danger and fled across the Red River to St. Boniface. From there, he hastened to the United States.

Wolseley took control of the settlement and recognized the HBC as the legitimate government. However, despite Wolseley's stated intentions, some of his volunteers staged brawls in the bars of the new settlement of Winnipeg in the days before the arrival of the province's first Lieutenant-Governor, Adams Archibald. These volunteers were blamed for three murders. Religious and ethnic tension in the community was high when Archibald arrived on September 2, 1870, owing to the racism and anti-Catholic feelings of the Ontario volunteers, while the Metis were leaderless and powerless.

CHAPTER 2

Provincial Foundations, 1870-1885

Adams Archibald, Manitoba's first lieutenant-governor, took charge and began establishing a government and a system of justice that was fair and just to all in a tension-filled environment. He quickly appointed an executive council of Alfred Boyd and Marc-Amable Girard to help him deal with the most pressing problems of the infant province, such as the formation of a government and Legislature and the administration of justice. For the elections to the first Legislative Assembly in December 1870, 24 constituencies were carefully drawn up, 12 in English-speaking parishes and 12 in French, to dampen fears of Anglo-Protestant dominance in the government of the new province. In January 1871, Archibald enlarged the executive council to five members, adding Henry J. Clarke. Archibald appointed Clarke Manitoba's first attorney general. Clarke served for about three and one-half ye and is also considered to have been a first minister of the province from 1872 to 1874.

Archibald, Clarke and the Establishment of Manitoba's Justice System

Henry Joseph Clarke

Henry J. Clarke was born in Ireland and raised in Montreal. He was a devout Catholic, whose appointment was met with displeasure by Protestants and enthusiasm from the Catholic community. Clarke set out immediately to create a system of courts, jails and law enforcement for the province. He advocated a two-tiered court system, featuring a supreme court made up of three judges, two of whom would also serve as petty-court judges. Archibald, on the other hand, wanted a supreme court with only one judge, who would hear the most serious criminal and civil cases. At the time, he was having difficulty

getting one judge appointed by the federal government and could not conceive of a system with three judges. What began as a minor disagreement grew into a serious dispute, largely because of Clarke's refusal to compromise. Despite his appreciation of Archibald's views, Clarke tried repeatedly to steer his three-judge system through the Legislative Assembly and force the lieutenant-governor to assent to it. These moves inspired fury in Archibald and forced the intervention of Prime Minister Macdonald. The result was the implementation of Archibald's system. The issue created mistrust between Clarke and Archibald and forever poisoned relations between them.

Clarke's problems were not confined to the courts. The attorney general became aware of a disturbing fact: no matter what laws were passed, the province lacked means of enforcement. As a solution, Clarke looked first to the men of the Wolseley expedition. He soon realized that many of the members of this often-drunken group were themselves the perpetrators of crimes in the community. Clarke appointed a man named Frank Villers as police chief and gave him the task of raising a police force. The appointment was disastrous. Villers took full advantage of his position and soon became known for his corrupt ways. Within a year, the corruption of the police force had become so apparent that Clarke was forced to act. He fired Villers and replaced him with Louis de Plainville, who at the time was deputy police chief.

De Plainville had an amazing past. He was an exiled French nobleman who had emigrated to Manitoba--and a professionally trained opera singer. At the time of his appointment he was an experienced police officer and was beginning a campaign for prison reform. Clarke was not swayed by calls for improvements to the prison system. The police chief was resolute, however, going so far as refusing to keep prisoners overnight in cold weather for fear that they would freeze to death. In addition, de Plainville brought in a doctor to certify that the cells were unfit for human habitation. Clarke responded by cutting the police force from 24 to 16 in order to free up funds for jail improvements, but no renovations were made to the jail.

Another major concern for Clarke was the influx of lawyers into Manitoba. A surplus of qualified lawyers convinced him something needed to be done to protect the practise of law in the province. On May 3, 1871, Clarke introduced

legislation to regulate lawyers in Manitoba. This action laid the foundation for the Law Society of Manitoba. Adams Archibald was unimpressed, however. Clarke's bill called for restrictions on out-of-province lawyers, reflecting the attorney general's belief that only 10 out-of-province lawyers should be allowed to practise in Manitoba at any one time. Clarke also wanted the attorney general to have the final say on who could practise. Along with provisions to boost the standing of locally trained lawyers, Clarke also advocated a tariff on all legal services provided by out-of-province lawyers.

Archibald was adamantly opposed to restricting the legal profession in this way, as he believed that Manitoba needed more established legal talent. The lieutenant-governor made it known to Clarke that he would not assent to any restrictive legislation. Despite this threat, Clarke steered his bill through the Legislative Assembly. Just as he seemed poised for victory, Macdonald intervened on Archibald's side, forcing Clarke to amend his bill, effectively removing most of the protectionist clauses.

In the summer and autumn of 1871, Clarke was also troubled by the prospect of a Fenian invasion from the United States. The Fenians were an anti-British group, consisting mostly of Irish immigrants to the United States. The American Fenians had organized armed forces around the end of the Civil War, believing that any strike against a British possession was a blow for Irish independence. They made raids into Canada in 1866 and 1870 and were considered a serious threat for a small settlement with little military protection. Archibald called for volunteers to take up arms and meet the Fenians at the border. However, the insignificant invasion force was disbanded by American troops in Pembina, Dakota Territory, before it could even cross the border.

Nevertheless, the repercussions from the Fenian incident were significant. Riel had helped organize Metis volunteers against the Fenians. Despite Riel's participation in Manitoba's defence, many English Manitobans blamed him and saw the threatened invasion as an act of the provisional government in exile. Indeed, one member of Riel's government, W.B. O'Donoghue, was a loyal Fenian and most likely instrumental in the planning of the raid. In the aftermath of the incident, three Metis were rounded up and accused of collaboration with the enemy. Clarke indicted the men for treason and undertook the prosecution

himself. The trial polarized public opinion in the province. *Le Metis*, a newspaper owned by the Franco-Manitoban defence lawyer Joseph Royal, lambasted Clarke and the government; while the *Manitoban*, English-owned and operated, praised the attorney general for his vigilance. The trial ended as a compromise, with two of the Metis acquitted and one, Oisean L'Etendre, found guilty of treason. L'Etendre was sentenced to death, but the sentence was reduced to banishment after a plea for clemency from several prominent citizens.

Clarke continued on his confrontational course with Archibald. In 1872 he again tried to change the court system, a move that resulted in the creation of the Court of Queen's Bench. Archibald, understandably furious and embarrassed by the actions of his minister (and under pressure because of his handling of the Fenian incident), submitted his resignation to Macdonald. In 1873, Archibald was appointed lieutenant-governor of his native Nova Scotia.

Clarke found himself serving under a new lieutenant-governor, Alexander Morris. Morris had been appointed chief justice of Manitoba in 1872 and had already experienced the turbulence of Red River politics. The first federal election in Manitoba, in 1872, resulted in riots and increasing English-Metis violence. Morris convened his court to decide whether the accused rioters should be indicted. This caused a great uproar in the English-language community, as all the accused were English. However, no indictments were handed down and the matter was closed. A few days later, some English rowdies planned to set upon the jail and release some of their comrades, who were being held for a variety of acts. Morris got wind of the plan and very publicly announced that he would remain at the jail until no threat remained. The plotters took note and the jail remained undisturbed. Morris's short but exemplary career as chief justice ended in December, when he accepted appointment as lieutenant-governor.

The "Lord Gordon Gordon" Case

In the early 1870s, Manitoba's lieutenant-governors exercised more power than their first ministers did. With the entry to office of Morris, who had no dispute with Clarke, the attorney general's office could look forward to an end to the turbulence of its first two years. However, in 1873, the bizarre case of Lord

Gordon Gordon grabbed the attention of the international press and thrust Clarke back into the spotlight.

Gordon's very name suggests the duplicity of which this man was capable. He claimed to be a Scottish nobleman on a pheasant-hunting trip, who had made his way to Winnipeg. In reality, Gordon was an English con man, who had taken hundreds of thousands of dollars from American millionaire businessman Jay Gould. His swindle of Gould worked incredibly well: he presented himself as a nobleman who wanted to finance a railway. Gordon hoodwinked Gould into giving him cash loans in return for shares in Gordon's make-believe company. When Gordon was finally exposed, he was arrested in New York but was released on bail. He took a train to Montreal the same night.

In the summer of 1872, he arrived in Winnipeg and soon became the darling of the city's social elite with his good looks and dashing demeanour. Gordon's time in Winnipeg went smoothly until agents hired by Gould seized him on July 3, 1873 and headed for the American border. These men were pursued, caught and brought back to Winnipeg to face charges of kidnapping. Thus began a long public trial of the accused kidnappers and an embarrassing international incident. The governor of Minnesota sent several letters to Clarke asking for the release of the men, but all these requests were rejected. Clarke was convinced that Lord Gordon Gordon was who he purported to be and was sure that the trial would reveal it. Clarke conducted the prosecution himself. The men were tried and convicted, but Clarke arranged that they would serve only one day before being returned to the United States.

By 1874, however, it was becoming apparent that Gordon was not a nobleman after all. After much damning evidence was released to the press, he was finally detained by detectives from Toronto, but managed to get away long enough to put a revolver to his own head. Gordon's suicide was followed by confirmation that he was in fact an English tradesman who had successfully conned his way across North America. Clarke's vehement defence of Gordon was a source of great embarrassment both to him personally and to his office. Eager for some time out of the limelight, Clarke must have wished for a period of more calm. Instead, 1874 brought increased attention to his office with what was perhaps the most controversial case of his career: the trial of Ambroise Lépine.

The Downfall of Clarke and the Trial of Ambroise Lépine

By 1874, the English community in Manitoba had a sizable body of qualified lawyers. One of its leaders was Francis E. Cornish, by most accounts a brash and rude man, but extremely intelligent. Best known as the first mayor of Winnipeg, he was also decidedly anti-Catholic, anti-Metis and especially anti-Riel. He had longed to prosecute the members of the former provisional government, particularly Riel. Cornish set out to gather information about the execution of Thomas Scott. The evidence was gathered and presented to Clarke, who had little choice but to charge Riel and Lépine with the murder. Riel was no longer living in Manitoba, but Lépine surrendered without a fight. Clarke decided that he should undertake the prosecution himself, probably to avoid having Cornish as the prosecutor--but Morris did not allow him to appear.

The arrest of Lépine stirred up ethnic tensions anew and caused Clarke to lose the little support he retained in the Catholic community. As an Irish Catholic, he had no support among English-language Protestant Manitobans. When the government fell in 1874 on a vote of non-confidence, Clarke was removed as attorney general and left behind an office enveloped in racial and religious tensions. Embattled and embittered, Clarke decided to leave Winnipeg and head for California. In St. Paul, Minnesota, he met and dined with the state's governor but shortly thereafter encountered the men he had prosecuted in the Gordon case. Aided by a group of Fenians, they beat Clarke savagely and left him to die. He recovered, but never again played an active role in politics.

Clarke's contributions to the administration of justice in Manitoba cannot be understated. In his role as Manitoba's first attorney general, he laid an important foundation for the office. His period as attorney general is defined by the sense of innovation and balance that he brought to that office during its formative years--which were also those of Manitoba itself.

By 1874, Alexander Morris was considering the members of his executive council as his responsible advisers. After the fall of Clarke, Marc-Amable Girard became the first person to be considered a premier of Manitoba. He appointed Winnipeg

lawyer Joseph Dubuc as attorney general. Born and educated in Montreal, Dubuc came to Red River in 1870 to uphold Catholic rights. Dubuc's appointment could not have come at a more awkward moment, as he had been retained as counsel for Lépine. Clearly he could not follow Clarke's lead of prosecuting major cases, and was forced to take himself out of the trial completely. The only other lawyer in the province with enough knowledge of the case to conduct the prosecution was Cornish. His ambition to lead the prosecution was fulfilled, as he was appointed Crown counsel for the remainder of the trial.

As Clarke fell, a new figure was rising to prominence in the fledgling Manitoba justice system. After suffering from the absence of a chief justice following the departure of Morris, the Manitoba judiciary was given new leadership in 1874 in the person of Chief Justice Edmund Wood. Wood arrived in Winnipeg in June 1874 to an enthusiastic welcome from the province's legal community. He was known to have an extremely stern disposition and an intolerance of courtroom dramatics. However, his reputation for strictness but fairness was put to the test almost immediately in the trial of Ambroise Lépine.

The trial itself was a relatively simple one. Lépine was not being tried for his role in the 1869-70 Resistance, but rather for the murder of Thomas Scott. The trial lasted 13 days, was intensively covered by the Winnipeg press and polarized opinion along linguistic and religious lines. Despite the ethnic tension in the community, the half-French, half-English jury took only three hours to find Lépine guilty, on November 2, 1874. However, although the jury recommended mercy, the normal sentence of death was imposed. Eventually, the national repercussions of the trial and sentence caused Governor-General Lord Dufferin to reduce Lépine's sentence to two years in prison and forfeiture of his civil rights.

The trial was also a blow to Louis Riel. Although absent, he was declared to be a fugitive from justice. For Cornish, the verdict was a tremendous victory, but for Riel, a betrayal. With Lépine, he was accorded a long-promised amnesty in 1875, with a choice of five years' exile or two years in prison. Lépine decided to remain in prison, while Riel chose exile.

The Lépine trial significantly affected the position of the judiciary as well. Wood lost the high esteem he had held in the Metis and Catholic communities. In their

eyes, Wood's decision in the trial meant that he was sympathetic to the Anglo-Protestant community. This perception of the chief justice as a puppet of that community added to their feelings of loss over the end of the Girard government shortly after the trial. Conversely, the Anglo-Canadian community believed it had finally triumphed in its efforts to introduce a new order in Manitoba replacing Metis-oriented traditions. Robert A. Davis was invited to succeed Girard and became premier in December, 1874.

Davis was the first Protestant premier of Manitoba, a step that reflected the changing ethnic patterns of the province. A fiscally cautious man, Davis did not see the need for an attorney general and abolished the position in 1875. He chose to contract out the duties of the Crown to Winnipeg lawyers, paying far less than the fees given to Clarke and Dubuc. After a year, the position was reinstated, although on a non-paying basis, and was held by Joseph Royal. Despite Royal's valiant efforts as attorney general, the very poor pay of the contract lawyers raises questions about the standard of administration of justice in this period.

During the 1870s, Manitoba was going through a demographic shift that fulfilled the fears of the Metis and Catholic communities. The great majority of the new settlers were Anglo-Protestant, sharply shifting the formerly even balance between Protestant and Catholic, English and French-speaking. By 1879, many of the Metis had retreated westward to what is now Saskatchewan. Only a few of the constituencies in the Legislature were in recognizably Franco-Manitoban and Metis districts.

John Norquay and Manitoba's Boundaries

In 1878, John Norquay became premier of Manitoba. Almost immediately he returned the position of attorney general to its former stature, appointing D.M. Walker to the post. Walker's tenure (1878-1882) was uneventful. He was fortunate enough to be attorney general during a period of unusual peace, devoid of the ethnic tensions of Manitoba's first years, and strong economic growth. The influx of immigrants, and the development of agriculture and business created a period of boom, speculation and high land prices in the late 1870s and early 1880s. However, the boom crashed in 1882 and the office of the attorney general

was inundated with bankruptcy claims and disputes over land deals. Walker's successor, A.M. Sutherland, had to deal with the flood of cases.

Manitoba's original 1870 boundaries quickly were perceived as inadequate for the province's needs and ambitions. Norquay took over the effort to gain more territory and in 1881 succeeded in having Manitoba's northern boundary extended to 52°50' and the western boundary moved to the present border with Saskatchewan. However, the eastern boundary was fixed as the boundary with Ontario and Ontario and the federal government were in dispute over where that line should be fixed. In 1881, Manitoba stated that the boundary should be fixed near present-day Thunder Bay on Lake Superior, and in 1882 began to assert its jurisdiction in the territory to its east.

The rivalry with Ontario became most intense in Rat Portage, in the Kenora area. Both provinces incorporated the town and put municipal and law-enforcement systems in place. Not surprisingly, Rat Portage became the site of some serious disputes. Both Manitoba and Ontario sent provincial police officers to the community; offenders were arrested by the authorities of one province and released by those of the other. And the two provinces added to the confusion by deciding to hold their respective general elections on the same day in 1883. Briefly, in that year, the area was represented in both legislatures, with the Manitoba MLA, J.A. Millar, becoming attorney general and serving for two years. But the Manitoba and Ontario attorneys general met and agreed to have the boundary dispute referred to the Judicial Committee of the Privy Council. In 1884, the Privy Council ruled that, south of 52°50', the Ontario-Manitoba boundary should be set at its present location. The result was distressing to Millar, who resigned his position in 1885 and was replaced by C.E. Hamilton.

Hamilton took office during events that completely overshadowed a mere interprovincial squabble. In 1884, Louis Riel had been summoned from his American exile to assist the Metis of the Saskatchewan Valley in negotiations with the federal government. Many of the Metis had left Manitoba to settle along the banks of the North and South Saskatchewan rivers near Prince Albert, in what was then the Northwest Territories. They were resentful over lack of federal attention to their concerns. Riel demanded that the Metis and Plains Indians be given a homeland autonomous from Canada. He was largely ignored in 1884,

which gave him a chance to organize support from both peoples. In March 1885, at Duck Lake, 12 Mounted Police constables were killed in a clash with the Metis, an act that started the Northwest Rebellion.

News of the rebellion quickly reached Manitoba and English-speaking Manitobans responded to a call for volunteers to put down the uprising. The ethnic and religious hatreds that had swept the province in 1870 again set Winnipeg ablaze. By July, it was all over. Riel went on trial for treason in Regina on July 26, 1885. At trial, his lawyers pleaded with him to claim insanity, but he refused. Riel was convicted of treason and sentenced to be hanged.

Although Riel's trial took place in the Northwest Territories, a Manitoba court helped determine his fate. His appeal was heard by the Manitoba Court of Queen's Bench, which upheld the trial verdict and sentence on September 9. On October 22 the Privy Council confirmed the decision and Riel was hanged in Regina on November 16.[1]

Riel's execution signalled the end of an era in Manitoba. The province, in the words of Manitoba historian J.A. Jackson, had become "a miniature Ontario," with a high concentration of Anglo-Canadian Protestants. Manitoba was born in a crucible of ethnic, religious and linguistic tensions. What was for Sir John A. Macdonald a simple land deal was much more complex for those who had to deal with the human factor.

The foundations of justice in Manitoba had been laid by men largely from Eastern Canada. The young lawyers who accompanied Archibald were oblivious to the conditions into which they were headed. But these men--notably Clarke, Dubuc, Morris and Royal--took a territory embroiled in tension and rife with disorder and established a system of justice that survived through Manitoba's first, tumultuous decade. Even the 1885 rebellion could not destroy the work of these men and the solid foundations that had been laid. Manitoba had finally achieved a sense of stability, the bedrock of which was its justice system. Shortly after the Riel trial, Norquay created the department of the attorney general, a step that gave more prestige and definition of powers to its head. The new department was responsible

[1] *R v. Riel* (1885), 2 Man. R. 321; affd. 10 App. Cas. 675 (P.C.)

for handling several of the challenges inherent in a growing province and to responding to demands from the government, the press and public on the status of justice in the province.

CHAPTER 3

Era of Growth, 1885-1916

By 1887, the Norquay government was under heavy attack on several fronts, including its railway policy. The government found itself in severe difficulty in the fall when the federal government did not fulfil a promise for a land grant for construction of a railway line. The move left provincial bonds issued for the project without collateral. Although Norquay's personal integrity was never sullied, he came under fire for these financial dealings and resigned in December 1887. A month later his party was out of office.

Thomas Greenway and "Fighting Joe" Martin

Into the leadership void stepped Thomas Greenway and his Liberal Party. After he defeated Premier D.H. Harrison in January 1888, Greenway quickly set about building a government. For the post of attorney general, he chose Joseph Martin, a tough lawyer whose reputation as a tenacious fighter earned him the nickname Fighting Joe. While Martin's demeanour seemed to suggest a rough-and-tough individual, many of his actions in office were very liberal, especially for his time.

Martin campaigned for increased rights for women and was sympathetic to the needs of the working class. He also introduced some very advanced social legislation. Under his guidance, the department constructed a home for juvenile offenders in Brandon. In addition to this positive reform, Martin made the controversial decision to allow Manitoba lawyers to work on a contingency basis. Although critics like W.F. Luxton, publisher of the *Free Press*, saw this as a corruption of the legal profession, the move gave many poor Manitobans access to legal representation, which previously had been financially impossible.

Martin's tenure was curiously eclectic: he was progressive in the social reform of the law, but introduced legislation and took measures that were extremely divisive

in the community. He was also a businessman. His actions in 1888 showed clearly that he would not hesitate to use his authority as attorney general for personal gain. By 1888, the Canadian Pacific Railway dominated rail traffic in Manitoba. The Greenway government, frustrated by the CPR's position of strength, permitted the Northern Pacific and Manitoba Railway Company (NP&M) to build lines in Southern Manitoba. The NP&M's vice-president was none other than Joe Martin, who stood to profit immensely from the construction of the railway's planned line. It was apparent that the track would have to cross the CPR in the community now known as Fort Whyte in suburban Winnipeg. The CPR refused to allow the crossing, but Martin was undeterred and had it installed in the middle of an autumn night. When the CPR ripped up the crossing, Martin commissioned 300 special constables to put the crossing back – by force, if necessary. Finally, the federal government stepped in and referred the issue to the Supreme Court, which ruled the NP&M line legal. Despite such an obvious abuse of power, the railway controversy made the attorney general somewhat of a hero. The CPR had become so unpopular that anything done to hurt the company was seen as a good thing. Martin's popularity with the public as a whole was fleeting and he soon took his department on a precarious course that led ultimately to his defeat.

The Manitoba School Question

The legislative session of 1890 was a very difficult one, dominated by two issues that assumed national importance. The first was whether French should continue to enjoy an equal status with English in Manitoba. Martin and Greenway introduced *The Official Language Act*, which made English the only official language. The second issue was education and the structure of the school system. Worried that some Manitoba children would fall between the cracks in the existing denominational school system, the government introduced *The Public Schools Act*. It ended all support for religious schools and established a non-religious public-school system open to all. The legislation was bitterly opposed by Roman Catholics and particularly Franco-Manitobans, who believed that both acts were another attempt to assimilate them through what would be an English-language school system. A major point of concern in *The Public Schools Act* was Section 6, which provided that religious exercises were to be held just before the end of afternoon classes. Catholics were concerned that these ceremonies would

be Protestant and thus in violation of their own faith. Perhaps the most contentious point was that even if Catholic parents sent their children to private schools, their tax dollars would still support the administration of public schools. The Manitoba School Question quickly went to court. It also dominated the agenda of the department for the next six years.

The first court case was *Barrett v. City of Winnipeg*, which challenged the right of the province to pass *The Public Schools Act*. The Barrett suit alleged that the act violated Roman Catholic constitutional rights to schools supported by public taxation. The case eventually went to the judicial committee of the Privy Council in England, which found that the legislation did not violate the rights of Roman Catholics.

Undeterred by the decision, the Catholic community lobbied the federal government for remedial action under Section 93 of *The Constitution Act*. A clause in this section allows appeals to Parliament if minority education rights in place at Confederation or enacted later are removed or infringed. Six questions on federal powers under Section 93, known collectively as *Brophy v. Attorney General of Manitoba*, were referred first to the Supreme Court and then to the Privy Council. Early in 1895, the Privy Council held that Ottawa could act. The Conservative government first tried to persuade Manitoba to change its position and its legislation. When the province refused, Ottawa introduced its own remedial bill in Parliament. But the bill did not proceed past second reading before Parliament had to be dissolved in 1896 for a general election.

The Liberals, under Wilfrid Laurier, won the election. One of the first orders of business for the new government was to find a workable solution to the Manitoba School Question. The issue was now six years old and the beleaguered legislation was a constant pain to Premier Greenway, who was ready to make a deal. In November 1896 an agreement was reached, sometimes referred to as the Laurier-Greenway Compromise. The agreement included guarantees to the Catholic community on religious teaching, language instruction and the ratio of Protestant to Catholic teachers. Six long years of fighting over the schools were over and the department of the attorney general could move on.

Martin had already moved on and out of provincial politics. Serious differences with Premier Greenway caused Martin's resignation in 1891; Greenway appointed Clifford Sifton, 31, the MLA for Brandon, to replace him. Although the *Free Press* thought Sifton too young for the post, his constituents regarded him as a community leader and generous philanthropist. Sifton was appointed to help solve the Manitoba School Question, but he is remembered for much more than his dealings with the federal government over this issue. One of the most pressing matters he and the department dealt with was the overcrowding of the courts. Sifton presided over the streamlining of court procedures for maximum efficiency and the expansion of Winnipeg's courthouse. By 1894, the expansion was well under way, but already Sifton was starting to look elsewhere. In 1896, he resigned as attorney general of Manitoba and became minister of the interior (responsible for immigration) in Sir Wilfrid Laurier's Liberal government at Ottawa.

During the reign of the Greenway government, the department grew immensely. Attorneys General no longer farmed out tasks to private lawyers on a contract basis. Instead, the department began to retain full-time assistants and the position of deputy attorney general was officially created. The deputy attorney general was charged with running the day-to-day functions of the department and putting into practice the initiatives and decisions of the attorney general. The position of accountant was also created. These two positions solidified the department's position in the provincial government structure and cemented the attorney general as one of the most powerful ministers in the government.

In 1899, the Greenway government was defeated, awash in criticism from several sectors of the electorate. The Conservatives, led by Hugh John Macdonald (son of the late prime minister) took power. However, Macdonald's stay as premier was short-lived, for his heart was always with the federal party that his father had dominated. In October 1900 he resigned to run (unsuccessfully) against Clifford Sifton in the federal election. Rodmond Roblin succeeded Macdonald as premier and took Manitoba into the 20th century.

Colin Campbell

Colin H. Campbell

The new century and government were also a new beginning for the department. Macdonald appointed Colin H. Campbell as attorney general. A native of Ontario, Campbell studied at Osgoode Hall Law School in Toronto. Campbell came to Winnipeg during the boom times of 1882 and stayed despite the downturn that followed. He practised law with some of Winnipeg's most prominent legal names, notably J.A.M. Aikins and Isaac Pitblado. In politics, Campbell differed from his party on several social issues, taking a more humanitarian stance than most of his colleagues. He was attorney general during a period of great change in Manitoba history, which altered the face of justice in the province. Just months after Campbell took office, the small community of Whitewater in southwestern Manitoba was shocked by a horrific double murder. On July 15, 1900, two farmers were found in varied states of dismemberment. Baited by zealous newspaper coverage, the public was appalled by the savagery of the crime. The shocked public revulsion prompted Campbell to take immediate action. For the first time in the history of the department a reward was offered for information leading to the apprehension of the killer. Although rewards were not news, at a time when a good suit cost $15, the $1,000 Campbell offered made a considerable impact. It immediately produced a wealth of information, which led to the identification of a man named Walter Gordon as a suspect.

The ensuing pursuit of Gordon was the kind of event that makes reporters salivate. After hacking the farmers to pieces, allegedly over a dispute about money, Gordon had coolly entered the United States and enlisted in the US Army. He was stationed in South Dakota. People pursuing him and the reward traced him there, only to find that he had deserted a week before they arrived. In a bizarre chase that stretched across the Northern United States, Gordon barely eluded the long arm of the law. He finally returned to Canada in September 1900, using fake documents. He was caught in Halifax only half an hour before he was to leave for

South Africa. Brought back to Winnipeg, Gordon was tried, convicted of murder and was hanged in January 1901.

Some of the informants involved in supplying the information that led to Gordon's capture may have been disappointed over the distribution of the reward. The promised sum was not paid out easily and not in full. Several people in both Canada and the United States claimed the reward. Campbell eventually decided that the funds should be split. He paid a man in Winnipeg and three men in Whitewater $50 each. He also awarded $200 to an army sergeant in South Dakota and $300 to an informant in Halifax--a total of only $700. Moreover, Campbell did not actually pay out the money until 1902, increasing the dissatisfaction over the handling of the reward

Campbell and the Liquor Laws

Campbell could be called an idealist. He believed that only a good and morally pure society, under the watch of God, could prosper. His strong religious beliefs led him on many a crusade, but none so determined or controversial as his fight for the prohibition of alcohol. By the turn of the century, Winnipeg had become a cosmopolitan city, replete with all the vices to be found in a large urban centre. Prostitution and liquor were easily available in the many brothels and saloons that lined the streets. The rising temperance movement in the United States inspired a similar campaign in Canada, which involved several of Winnipeg's religious institutions.

Campbell had entered the battle against alcohol in the early 1890s. During an economic downturn, he lamented the power of drink as having "an adverse effect on the working constitution of society." In the 1899 election campaign, he made clear his views on temperance, supported by his party's pledge to bring in provincial prohibition legislation. In the political notebook he kept, he wrote that every year, temperance advocates were coming closer and closer to forming the majority. The new Macdonald government took its victory as a mandate from the people to institute the restriction of alcohol use. On July 5, 1900, on behalf of the government, Campbell introduced a bill, known as the liquor law, in the Legislature. Although not a complete prohibition of alcohol, the bill prohibited the sale of liquor by hotels and merchants, imposed severe restrictions on the

number of liquor licences issued and strengthened penalties against persons caught intoxicated in public.

The bill, the first of its kind in Western Canada, was passed and caused immediate response from the "wets," as well as those who doubted its constitutionality. When Rodmond Roblin took office, the government referred the liquor law to the courts. Eventually, in part inspired by Campbell's belief in the law's soundness, the case went to the Privy Council, which upheld the legislation.[2] The government then took the issue to the people in a plebiscite asking Manitoba voters: "Are you in favour of bringing *The Liquor Act* into force on the first day of June 1902?" The campaigning was fierce. In the newspapers both temperance advocates and liquor interests waged a war of editorials and advertisements. The plebiscite results were mixed. Although the vote (15,607 opposed; 6,875 in favour) was decisive, the 22,464 ballots cast were far short of the 74,477 who were registered to vote. For some, this showed that the public still wanted access to alcohol; for others, it was simply an invalid assessment, since so many had not voted.

In the years after 1900, the department recorded sharp increases in liquor offences in its annual reports. The number of recorded offences doubled between 1900 and 1903. Offences doubled again in 1904 and again in 1905. This points to vigorous enforcement of laws that hitherto had not been paid much heed. Campbell's unceasing quest against the evils of liquor ended as far as legislation was concerned, but he remained an advocate of prohibition for the rest of his career. But while prohibition was his first interest, he was also deeply concerned with the influx of immigrants into Manitoba, an issue that was becoming increasingly important in the early 1900s.

Campbell and Immigration

When Manitoba's growth stalled in the 1880s, many thought that the province's boom times were over for good. But after 1896, conditions began to turn around. The economy boomed; people sought to better their lives and those of their families. Both the federal government and Manitoba successfully marketed this

[2] *Attorney General of Manitoba v. Manitoba License Holders' Association*, (1902) A.C. 73 (P.C.)

idea abroad and immigration numbers rose sharply. Although a large proportion of the immigrants to Manitoba came from Britain, many others were from Central and Eastern Europe. Entire communities were formed by people of one ethnic group from a single region of their homeland. Although the immigrants were a welcome reflection of prosperity and a new climate of expansion, the scale of immigration generated several problems for the administration of justice in Manitoba.

For Campbell, immigration was wonderful if it met his conditions. He believed Manitoba had to work with the federal government to ensure that immigrants to the province came from the right racial groups. He insisted that most immigrants must be of the desirable class, ideally from the British Isles. Barring that, he was willing to accept immigration from Northwestern Europe, specifically German Lutherans and Scandinavians. However, he believed immigration of undesirables from Southern and Eastern Europe had to be limited if the cultural fabric of Manitoba was to be protected. Campbell reasoned that immigrants from the British Isles and Northern Europe not only were more industrious and civilized, but followed a code of conduct that was similar to Manitoba's. His suspicion of immigrants from Southern and Eastern Europe centred on the fact that they were Orthodox or Catholic and thus did not have the same moral foundations as Protestants.

The department also faced challenges from the flow of immigrants. The rapid expansion of Manitoba's population taxed the resources of the justice system to the limit. In many immigrant communities, the attorney general had to appoint a justice of the peace who could communicate with the people. Immigrants had to be informed of the laws of Manitoba, as the British system of justice was foreign to many of them. After George Patterson became deputy attorney general (1904), he was given the responsibility of assimilating the immigrants and teaching them the laws of the land. For this task, Patterson turned to employers, the railways and industrial shops in Winnipeg and the immigration agents. These makeshift efforts, while admirable, showed how understaffed and overworked the department was at this time.

The Creation of the Juvenile Court

The increase in Manitoba's population was accompanied by a parallel rise in crime that caused a crisis in the court system. At times the Court of King's Bench was so overwhelmed that it had to conduct two trials simultaneously in the same courtroom. This did not sit well with the judiciary, whose efforts in this period were nothing short of heroic. Campbell realized that, unless he took decisive action, he would face a revolt by the judiciary and the rest of the legal community. A major part of the problem was the large number of young people appearing in the courts. In response, Campbell decided to create Canada's first juvenile court. The impetus for this initiative lay with Winnipeg police magistrate Thomas Mayne Daly, a long-time advocate of a special court to deal with juveniles.[3] Following the enactment of the federal *Juvenile Delinquents Act* (1908), the court was established in 1909 and Daly was appointed as the first judge.

The court was an experiment that received national attention and it soon succeeded in reducing the number of repeat offenders. Its creation reflects both the relative ease with which an attorney general and his department were able to initiate reform and the general feeling of progress that permeated almost all parts of society. The creation of institutions such as the juvenile court was typical of the spirit of the time in Manitoba and of an understanding society that supported social reform.

The Fedorenko Affair

The department once again came into the international spotlight in 1910, when the Russian government demanded the extradition of Savva Fedorenko, a new immigrant to Manitoba, to face charges of murder (terrorism). It was said that Fedorenko had shot and killed Samson Osadchuk, a village watchman, under circumstances that according to the law of Canada would make the offence murder. Fedorenko resisted extradition on the basis that the offence disclosed in the evidence was of a political character. The court ruled that Fedorenko must be

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[3] Daly Authored *Daly's Canadian Criminal Procudure*, a leading textbook published by the Carswell Company from its first edition in 1911 until the final 5 year supplement in 1941.

extradited, but the verdict was appealed. The department was not required to act for Russia, as outside counsel were hired. There was wide press coverage of the case, both domestic and foreign, and the department came under pressure from both sides to intervene on their behalf. However, it stayed clear. The Manitoba Court of King's Bench, sitting in an appellate capacity, overturned the earlier court decision and ordered Fedorenko's release on a technical ground.[4] By the time Russia was able to appeal to the Privy Council, successfully, Fedorenko had vanished and was never caught.[5]

Tragically, Campbell suffered a stroke in 1910 and his diminished capacity was a major factor in his decision to retire in 1911. His service as attorney general was the longest to date. His procedural reorganization of courts and the creation of the juvenile court were a major advance in the judicial process. Campbell failed, however, in his crusade to achieve prohibition and he and his legacy will forever be linked to this quest. His xenophobic attitude to peoples of Eastern European origin was a stain on an otherwise exceptional tenure. But his contributions to the department were perhaps the most significant since those of Clarke.

J.H. Howden and John Allen

Campbell's successor, J.H. Howden, was a native of Ontario who moved to Manitoba to article. He served in the office of N.F. Hagel, one of the great courtroom showmen of the period. He moved to Neepawa and became the town mayor in 1892. Howden served two terms, then won a byelection in 1903 and as an MLA became a favourite of Roblin. Roblin appointed him Minister of Education in 1908. Howden left that post to become attorney general.

In 1913, John Allen, a young lawyer in the department, replaced Robert Blackwood Graham as deputy attorney general. Allen was called to the bar in 1909 and had been with the department since 1911. Although he had articled in Winnipeg, he had not attended law school. Instead, he won a master's degree in mathematics from Queen's University. His appointment proved to be monumental

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[4] *Re Fedorenko* (No. 1) (1910), 17 C.C.C. 268; Re Fedorenko (No. 2) (1910), 17 C.C.C. 271 (Man. K.B.)

[5] *Re Fedorenko* (No. 3) (1911), 18 C.C.C. 256 (P.C.)

for both Allen and the department, as he remained in his post until 1944. His youthful exuberance and professionalism were vital in the first years of his service, starting with the outbreak of the First World War in August 1914. The department quickly shifted into wartime footing, requiring citizens to register their firearms with local police units. The department even participated in recruitment campaigns. The deepening war to some extent diverted Manitobans' attention from provincial politics, but growing controversy about the construction of the new Legislative Building drew the province into crisis.

The Legislative Building Construction Scandal

In 1913, construction of the present Legislative Building began. The plans for this ambitious project included a number of other proposals, chief of which was the Old Law Courts, built across Broadway at the corner of Kennedy Street.

After a close, bitterly fought election in 1914, which was won by the Conservatives, the Liberals began to raise charges of corruption in the Legislative Building project. These arose from alleged slack supervision of aspects of the work and inflated construction costs. The charges focused on Premier Roblin and Attorney General Howden. On April 1, 1915, presented with specific, documented charges, Lieutenant Governor Sir Douglas Cameron forced Roblin to appoint a Royal Commission. Thus began one of the lowest periods in the history of the department of the attorney general, one that saw several commissions of inquiry and criminal trials.

The Royal Commission (generally referred to as the Mathers Commission) consisted of T.A. Mathers, Chief Justice of the Court of King's Bench; King's Bench Justice D.A. Macdonald and Sir Hugh John Macdonald, then Winnipeg police magistrate. On May 12, after less than two weeks of work, the commission had unearthed enough support for the Liberal charges to force Roblin to submit the government's resignation. The commission concluded that Roblin, Howden and contractor Thomas Kelly had conspired to commit fraud. Very quickly, they and two other former Conservative ministers (Education Minister George Coldwell and Public Works Minister W.H. Montague) were indicted for fraud. Montague died before trials began. Eventually, after jury disagreement and

additional dispute, Roblin, Howden and Coldwell were discharged of further criminal liability in June 1917. Kelly fled to the United States, and Canada had to resort to extradition proceedings to bring him back. His bid to resist extradition ultimately was rejected by the United States Supreme Court on the 16th of April, 1916 and he was returned to Winnipeg on the 6th of May, 1916. At trial, his three lawyers moved to adjourn the hearing to properly prepare for trial. The trial Judge refused the delay, and he conducted the defence himself. Kelly was found guilty and sentenced to two years in Stony Mountain Penitentiary. Both conviction and sentence ultimately were confirmed both in the Manitoba Court of Appeal and in the Supreme Court of Canada.[6]

The scandal and change of government to the Liberals under T.C. Norris produced more charges, inquiries and consequences. The Conservatives charged that a corrupt bargain relating to possible Liberal election misconduct had been made in the agreement under which Roblin's government had resigned. They also alleged that the Liberals had agreed to reduce the Legislative Building inquiry to the level of a departmental committee. This was in the agreement, but only if the Royal Commission agreed and Roblin acknowledged the justice of the Liberal allegations. Roblin's letter of resignation was silent on the charges. Howden was implicated as the possible broker of the deal. A second Royal Commission was appointed June 24, 1915. Testifying before this commission, Roblin said that Premier Norris "is an honourable man and never in my knowledge has he advocated such a treacherous scheme." In its report, dated July 26, 1915, the commission exonerated Norris and found Howden responsible for the unsuccessful scheme.

Among the inquiries was one under Mathers into the construction of the Law Courts Building. It found slackness but no impropriety or attempts to obtain election frauds. The scandals had revealed great abuses of power in the attorney general's office, and Howden's short but eventful period in office was rife with financial irregularities. Although no one else in the department was implicated, the scandals cast a pall on the entire department.

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[6] *R. v. Kelly* (1916), 27 C.C.C. 140, affirmed at page 282 (S.C.C.)

Changes in Outlook and Leadership

With the formation of the Norris Liberal Government, the department was given new leadership when A.B. Hudson was appointed attorney general. He served until 1917. An early graduate of the Manitoba Law School (1898), Hudson worked in private practice for several years before becoming active in the Liberal Party. Elected to the Legislature in 1914, he brought a formidable knowledge of the law and was a model of integrity in his profession. These attributes eventually took him to the Supreme Court of Canada in 1936. His personal integrity was welcome in what was a dark time for his department.

One of the most constructive changes enacted by the new government came early in 1916, when Manitoba women became the first in Canada to win the right to vote. This act of the Legislature was soon followed by several other provincial legislatures and the Parliament of Canada. The Manitoba initiative had a significant impact on the department of the attorney general as women's issues stepped to the forefront of government concerns. John Allen and the department drafted the government's legislation providing for the proper and ethical treatment of women in the workplace--including a minimum wage and regular breaks.

CHAPTER 4

Strain, 1916-1945

Prohibition in Force

John Q.C. Allen

Of the many issues that John Allen faced as deputy attorney general, perhaps the most hotly debated was prohibition. In their election campaign in 1915, the Liberals had promised to legislate prohibition. Accordingly, in the session of 1916, the Legislature passed *The Manitoba Temperance Act*. The act was proclaimed June 1, after a referendum held March 13 in which Manitoba men voted in favour of prohibition by nearly two to one. The legislation forbade the sale of liquor in the province, except by pharmacists filling a medical prescription. However, people could still bring liquor into Manitoba for personal use, as could wholesalers for re-export.

The prohibition issue proved challenging for the department. In 1916, after the prohibition referendum, the deputy attorney general was anonymously tipped off that a group affiliated with the liquor interests had hatched a scheme to bribe election officials. Allen contacted the Manitoba Provincial Police, which set up surveillance of the group. They sent in an agent, described in reports only as "the Operative," who reported more than 200 times to his supervisors and Allen from May 29, 1916, to September 12, 1916. His reports painted a vast network of people in the liquor trade meeting in secret backrooms. The Operative even had a female source on the inside, whom he referred to as a woman of ill-repute. Whatever the extent of the efforts of the participants to the scheme, they failed to influence the referendum.

The following year the department and the government came under pressure from a group of rural churches calling itself the Council for Morality. The council wanted legislation to prohibit the making of alcohol for export. It applauded the actions of the department in its "thorough enforcement of the prohibition legislation," but urged Allen to continue the "vigorous prosecution of this greatest of all social evils." Rural Manitobans enthusiastically embraced prohibition as a better way to live, however, the citizens of Winnipeg were less enthusiastic. The saloon owners and hoteliers were hit very hard, and many citizens, notably returned soldiers, were unhappy at the loss of what they viewed as one of life's little pleasures. The opposition of returned veterans was one signal of the rising tide of discontent with society, a discontent that spread through other elements of the community and produced massive social upheaval at the end and aftermath of the Great War.

The department wanted to prepare for the returning soldiers. It envisioned an all-inclusive program that would see to the well-being of veterans and their families, giving veterans enough aid to allow for a short period of adjustment back to civilian life. The plans showed that the department was trying to keep up with changes in society, but events moved so quickly that it could scarcely succeed in this goal.

Among the changes, one of the most significant was rising militancy among Manitoba workers. Increasingly, as the war continued, workers and their unions sought better pay, recognition of bargaining rights and improved working conditions. Standing in the way of their vision was the capitalist establishment of the province: the government, major employers, the railways and the banks. The only weapon in the hands of the Manitoba labour movement was their labour. They could stop work and the machinery of capitalism would break down, forcing the employers to make concessions to the working class. In 1917, more person-days of work were lost to strikes and lockouts in Winnipeg than in the previous four years combined.

In May 1918, many Winnipeg civic employees went out on strike. The walkout spread to other labour groups and by May 24, nearly 7,000 workers were off the job. Combined efforts by the federal government, the City of Winnipeg and labour leaders produced a settlement that same day and the strike was seen as a

victory for the labour movement. The attorney general of Manitoba and his staff took notice: the rising power of the labour movement was recognized as a new social force. Governments, military leaders and the police feared the prospect of a tide of Bolshevism, inspired by the Russian Revolution and the coming to power of Lenin. The return to Manitoba of thousands of war veterans and the growing militancy of the Winnipeg labour movement were serious concerns for the department of the attorney general in 1918 and the early months of 1919.

The Winnipeg General Strike

On May 1, 1919, members of Winnipeg's building trades went on strike against their employers because the companies rejected their pay demands. The next day, metal workers followed suit. Their employers refused to agree to collective bargaining rights or ratification of a settlement proposed by the Metal Trades Council, a group of unions. A vote of most of the city's organized workers showed workers overwhelmingly favoured a sympathetic strike. The Trades and Labour Council set May 15 as the start of a walkout; early that day the Winnipeg General Strike began.

The city was paralysed, as local transportation, plant operations, deliveries and most civic services were halted. To allow some critical deliveries to homes and families, the Central Strike Committee authorized resumption of milk and bread deliveries. To prevent disruption of deliveries by strikers, the creamery manager suggested placards reading "Permitted by Authority of the Strike Committee" be placed on delivery wagons. To the department of the attorney general, this initiative looked like a takeover of authority from the democratically elected government. But in general, the department and the government stayed clear of the strike. Even when urged to act by Winnipeg Mayor C.F. Gray, the government answered that the strike was a matter to be dealt with by civic authorities.

For about four weeks the strike remained relatively tranquil. Thereafter tempers on both sides began to boil over and there was increasing willingness to court confrontation. The night and morning of June 16 to 17, several of the strike leaders were arrested and taken to Stony Mountain Penitentiary. They were charged with seditious conspiracy and seditious libel. Instead of breaking the

strike, the arrests rejuvenated the participants. At the department, John Allen was working incredibly long hours, performing his regular duties and acting as special assistant to A.J. Andrews. Andrews was a former mayor of Winnipeg and was a special deputy minister of justice for the federal government and a go-between for all three levels of government. The government strategy was simple: suppress any move against the democratically elected government of Manitoba and use any force deemed necessary to break the strike.

That strategy was played out on Saturday, June 21. Early that morning, the arrested strike leaders were released on bail. A march and demonstration were planned for that afternoon by returned soldiers. It was dubbed "the red parade" and was in violation of a ban issued by Mayor Gray. In the early afternoon, a crowd started to gather around City Hall. Gray called in the Mounted Police to clear the street. Many demonstrators surrounded and attacked a streetcar that was being operated by strikebreakers, setting it on fire.

Meanwhile the Mounted Police appeared from the south on Main Street and charged into the crowd. Wielding batons, they fought their way through, trying to disperse the crowd. Some constables were pulled from their horses. The police moved north past the demonstrators, regrouped and tried to make their way south past City Hall. At this point, Gray read *The Riot Act* and hastily left amid a chorus of jeers. Moving north, the police charged the crowd again, this time using their pistols, killing one man and mortally wounding another. The paraders scattered and the area around City Hall was occupied by troops with fixed bayonets and machine guns at the ready. The events of the day brought the strike to an end on June 25, and the strikers' paper, the *Western Labour News*, was shut down for several days. The strike-related work of the department of the attorney general had just begun.

The Strike Trials

Despite the contributions of John Allen and the establishment of special Winnipeg police constables, the department played but a minor role in the General Strike. This quickly changed with the arrest of strike leaders. George Armstrong, R.E. Bray, William Ivens, R.J. Johns, W.A. Pritchard, R.B. Russell and city councillors

A.A. Heaps and John Queen were remanded on charges of seditious conspiracy, seditious libel and illegal combinations.[7] F.J. Dixon MLA and J.S. Woodsworth were tried only for seditious conspiracy.

The department prepared very carefully for these trials. It collected evidence from as far back as nine years on several of the defendants. The Crown decided to try Russell separately. His trial began in November 1919; that of his seven co-accused was delayed until January 22, 1920. The department elected to use Andrews as the chief Crown prosecutor in the trials. His role as the lead federal strategist had given him first-hand knowledge of the defendants and their actions. That Andrews was acting in both these roles did not sit well with the defence, which tried unsuccessfully to have him removed as Crown counsel in the second trial.

Throughout the jury selection for the Russell trial, both sides struggled to find jurors who would be objective. It was a challenge. Virtually all of Winnipeg's citizens had been touched in one way or another by the strike. As a result, the jurors all came from rural Manitoba. Once sworn in, they heard Andrews charge Russell with an attempt to incite rebellion in Canada. Although Andrews' opening remarks were quite tame, the evidence he presented was damning.

Russell's defence was that he was simply a labour negotiator and was not trying to provoke a socialist revolution. Andrews presented evidence to the contrary, supported by hundreds of pieces of correspondence between Russell and other labour advocates across Canada. The letters resembled the style and greetings used by the Bolsheviks in Russia. References to Russell as head of the Winnipeg Soviet of Workers further refuted his claims. In addition, the placards hung on delivery wagons during the strike were now used against him. In total, the Crown submitted 1,013 exhibits.

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[7] Initially refused bail by Cameron, J., of the Court of Appeal, sitting as a Judge of the Court of King's Bench, the accused ultimately were released on bail by Mathers, C.J.K.B. Interestingly, Chief Justice Mathers decided to have two other Judges sit with him on the application. He said: "Because of the great public interest involved in this prosecution and because bail had once been refused by a brother Judge, I asked my brothers Macdonald and Metcalfe to sit with me while hearing this application, and I have the satisfaction of knowing that they both concur with me in the views here expressed." [*R. v. Russell* (1919), 32 C.C.C. 66 (Man. K.B.)]

The task of Russell's lawyers was almost impossible in the face of Andrews' case. The lawyers held to a steady course of defence that emphasized the rights of free speech in Canada and told the jury Russell's actions had been morally correct in the face of oppression. They sought to show that there had been no conspiracy among the strike leaders. One defendant, Johns, had been in Montreal during the strike and another, Pritchard, was in Calgary most of that time. The jury handed down a verdict of guilty on all charges, and Russell was sentenced to two years in penitentiary. An attempt was made to have the conviction overturned, largely on the basis that some documentary evidence that had been led by the Crown was inadmissible and had affected the fairness of the trial. On the 24th of February 1920, five members of the Manitoba Court of Appeal unanimously rejected Russell's appeal.[8]

The Russell trial was one of the most important court cases in the history of labour relations in Canada. For the labour movement, it was a setback: one of its most dedicated leaders was sent to prison. But it was also a victory, as the trial showed that Russell, his colleagues and followers were no longer willing to back down in the face of the law. This demonstration of defiance sent a clear message to the establishment in Manitoba and across Canada: if concessions were not made, Winnipeg would be just the beginning.

In the second major trial, of Armstrong, Bray, Heaps, Ivens, Johns, Pritchard and Queen, the Crown used the same strategy as it had against Russell. It tried to show that these strike leaders, in the words of the indictment, "conspired to bring into hatred and contempt the government, laws and constitution of...Canada and...Manitoba." The trial, which lasted from January 22 to April 7, went well for the Crown. The defence again insisted that there had been no conspiracy between any of the men or within the labour movement. Only Heaps, who defended himself, attempted a different defence. He tried to insulate himself from the others and maintained he was only a passive member of the group. This worked well, as he was acquitted while the other six were convicted.

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[8] *R v. Russell* (1920), 33 C.C.C. 1 (Man. C.A.)

The last major trial was that of Dixon, editor of the *Western Labour News*. He was tried for seditious libel, arising from some speeches he made during the strike and editorials that slammed the government and democratic government in Manitoba. The trial, held in January and February, garnered special attention because Dixon's defence was essentially an argument on freedom of the press. The newspapers covered the trial closely and were much more careful in their criticism of Dixon than of the other defendants. Because of the different and more specific charge, the Crown could not employ the same strategy as before. The jury agreed with Dixon and acquitted him; the charge against Woodsworth was stayed. Several other trials took place in 1920, in which most of the defendants were acquitted.

The Winnipeg General Strike aroused passions across Canada and the ideological divide of labour vs. capitalism was set firmly in place for future generations to debate. For the department, the strike trials showed the abilities of men like John Allen and that its staff was capable of meeting the greatest legal and societal challenges. In a dark period in the history of Manitoba, the department experienced a sense of great achievement.

The 1920s

The early 1920s marked a return to the routine of civilian administration, a process that had been delayed by the department's preoccupation with the General Strike. However, the Norris government was defeated in 1922 by the United Farmers of Manitoba. John Bracken, principal of the Manitoba Agricultural College (who had not run in the election), accepted the invitation of the UFM caucus to lead them and become premier. Bracken appointed a former Conservative, R.W. Craig, as attorney general. Craig was not a very colourful man and did not intend to make great changes in his department. Instead, he concerned himself with legislation and left the department's internal operations in Allen's capable hands. Perhaps Craig's most significant contribution in his five years in office was the abolition of the grand jury, a cost-saving measure that put more power into the hands of the judiciary. It now fell upon a magistrate at a preliminary hearing to decide if a person should be committed for trial.

By far the most talked-about legislation of that period concerned the liquor laws. The 1916 legislation was becoming increasingly unpopular. Both the UFM and Bracken, in his byelection campaign to enter the Legislature, had promised a referendum on prohibition. In 1922 and 1923 the department received several petitions asking for changes in the law. One, from the Moderation League, contained 76,000 signatures and a draft bill. The government held referenda in June and July 1923. In the first, voters decisively approved government-controlled sale of beer and liquor, but later rejected sale of beer and wine with meals in hotels. Legislation implementing the first referendum was passed and came into force. The religious communities that had fought for prohibition tried to counter through petition and protest to the attorney general, but Craig turned a deaf ear.

Another important issue for the department was the provincial penal system. More jail space was needed to relieve overcrowding. The prevailing philosophy of the time was that prisoners must have activities and work to reform their criminal ways. None of Manitoba's jails had the facilities to provide for work. In response to this deficiency, a new jail was planned and built at Headingley, just west of Winnipeg. It had a prison farm on which inmates could learn the virtues of hard work. The jail was completed in 1930. The progressive nature of the planning and the facilities illustrates the forward thinking of the department and its belief that Manitoba's penal system should not simply punish but also teach and retrain prisoners.

William James Major

Craig retired from politics in 1927. His years in office had been calm and, except for the new liquor legislation, did not produce controversial legislation. He was replaced by W.J. Major, a native of Somerset, England. Major came to Canada in 1901 to farm, but studied law and was called to the Manitoba bar in 1913. He held several positions of community leadership before entering the Legislature in 1926. He was an energetic, meticulous man, who wanted to be informed on even the most mundane issues and conveyed the air of desiring action.

The Strangler

It did not take long for a dramatic issue to break the tranquility of the attorney general's office. In 1927, one of North America's first serial killers was being hunted. He was thought to be responsible for the murder of 21 people. His victims, all women, had been raped then strangled. Given the name "the Strangler" by the newspapers, the fugitive killed a 14-year-old Winnipeg girl in June 1927. He then killed a pregnant city woman. The man's appearance in Winnipeg struck fear in city residents and spurred the department to decisive action. As a result of the manhunt, a suspect was captured in the Boissevain area and placed in jail in Killarney. The suspect took advantage of lax security and escaped the same night. After an extensive but fruitless search, the police were tipped off to a man who had jumped a train near Killarney. This resulted in the recapture of the suspect, Earle Nelson of San Francisco. Despite requests for extradition from several American states, Major kept Nelson in Manitoba to pay for his crimes here.

The ensuing trial gained media attention from across North America. Nelson's lawyer contended that his client was insane and pointed to his stay in – and escape from – a mental institution as proof of mental incapacity to stand trial. Nevertheless, Nelson was deemed fit to stand trial, found guilty of rape and murder and sentenced to hang. The execution took place only months later, as no appeal was launched.

The Seven Sisters Controversy

In 1928, the department was placed in an awkward position during construction of an important power project on the Winnipeg River. The government had been drawn into a growing controversy over whether water-power sites on the river should be developed publicly or by the private sector. The government wanted provincially controlled development. It had to face the challenge of working out a satisfactory arrangement with the privately owned Winnipeg Electric Company (WEC) and the federal government, which then controlled Manitoba's natural

resources. Asked for a legal opinion, John Allen cautioned that expropriation of the WEC's Pinawa plant would be difficult because Ottawa still owned the Pinawa land. A report to the government by the chief hydraulic engineer of Ontario Hydro counselled against developing the Seven Sisters site under public ownership for economic reasons and recommended lease of the site to a private company. After some very tough bargaining, the government reached an agreement with WEC and its subsidiary, the Northwestern Power Company, in March 1928. In return for developing the site, the companies agreed to sell up to 30,000 horsepower of electricity a year to the Manitoba Power Commission for 30 years at a price of $13.80 per horsepower.

The deal, reached without involving or informing the Legislature (which had just adjourned), caused considerable public reaction. Several months of controversy ensued before the lease was granted in September 1928. In November the Conservative leader, F.G. Taylor, charged that the government had made an agreement with WEC as far back as 1927, in return for election funds for that year's campaign. A Royal Commission was appointed in January 1929, but its report at the end of April found that no "corrupt deal" had been made. It completely exonerated Premier Bracken and his cabinet in connection with the Seven Sisters agreement. However, in the course of testimony before the commission, two ministers, one of whom was Attorney General Major, admitted they had bought WEC stock. Both resigned from the government February 22, 1929 and remained out of office until May 18. Education Minister R.A. Hoey was acting attorney general during this time.

Lewis St. George Stubbs and W.J. Major

One of the most colourful controversies involving Manitoba's justice system and its leaders concerned Judge Lewis St. George Stubbs. Stubbs came to Canada in 1902 to be a farmer, but quickly turned to the law. He helped Dixon prepare his defence before his 1920 trial. After some unsuccessful ventures in politics, Stubbs was appointed as a judge of the Eastern Judicial District County Court in 1922, becoming senior judge in 1924.

Even on the bench, Stubbs continued to espouse and express his political views, a practice eschewed by his brother judges and the department of the attorney general. During the debate on repeal of prohibition, Stubbs sent a letter to all the major newspapers on official court stationery. Craig was furious with Stubbs and said so in the Legislature, reminding him that judges were supposed to be detached from politics. Stubbs responded by refusing to attend meetings of the Winnipeg Board of Police Commissioners, of which he was a member. He continued to be a thorn in Craig's side on the prohibition issue, and a few years later his actions presented an even greater challenge to Attorney General Major.

In 1929, a seemingly simple case of a rich man's will turned the halls of the Law Courts into a verbal and legal battlefield. The dispute over the will of Alexander Macdonald began when Stubbs granted probate to a will that left all Macdonald's assets to his family. Stubbs was then informed of another, earlier will, in which Macdonald had left a large portion of his wealth to his favourite charities. When the charities questioned the second will, Stubbs revoked the probate and launched an investigation into the matter. He eventually refused probate, on the grounds of possible "devious and underhanded" circumstances relating to the second will and because it appeared Macdonald lacked testamentary capacity to make it on his deathbed. Stubbs also believed that the will had been signed under false pretences and that Macdonald's son-in-law had lied about it in court. With Stubbs taking on the role of supporter of Macdonald's charities, the family heirs appealed and eventually won their case at the Manitoba Court of Appeal. Stubbs then wrote and published a pamphlet on the case, strongly criticizing the court and he organized a meeting at the Walker Theatre. The meeting produced a resolution that asked the Legislature to intervene in the case. The Legislature was somewhat bemused by Stubbs's actions. However, the meeting, a year-long speaking campaign and Stubbs's conduct in his court, brought him into direct conflict with Major, who wrote letters of complaint to the federal minister of justice over Stubbs's remarks in some of his cases.[9]

Major demanded that Stubbs be removed from the bench. The attorney general's feelings were shared by Court of King's Bench and Court of Appeal judges, who

[9] *Re Macdonald Estate*, (1929) 3 W.W.R. 693 (K.B.); (1930) 1 W.W.R. 242 (C.A.); Re Macdonald Estate (No.2), (1930) 1 W.W.R. 261 (Man. C.A.)

were horrified that a County Court judge would criticize their courts in public. The request was denied. However, Stubbs carried his campaign to greater lengths. In July 1932, he published a book, *Judicial Crimes*. In this short text, he used several newspaper articles and letters to illustrate how he was being persecuted by Major and his judicial brethren. The book contained several newspaper editorials from Winnipeg, Toronto and Ottawa that supported his crusade. A short time later, Stubbs' comments comparing time in jail served by an acquitted offender appearing before him with a sentence on another offender in another court appeared in the papers. Major sent another demand to Ottawa in September. This time, action was taken. Justice Frank Ford of the Alberta Supreme Court was asked to examine the charges against Stubbs and determine if his conduct was prejudicial to the administration of justice in Manitoba. Ford concluded that Stubbs's actions did indeed constitute judicial misconduct. In June 1933, Stubbs was unceremoniously removed from the bench. However, he ran as an independent in the 1936 provincial election. He led the polls in Winnipeg and faced Major across the floor of the Legislature for Major's last five years as attorney general.

The Great Depression

Poor agricultural conditions on the Prairies in the late 1920s and the crash of the New York Stock Exchange in 1929 helped trigger deep and prolonged depression in Canada in the 1930s. Manitoba was especially hard hit. The Depression produced great strain throughout society and the resulting unemployment and desperation led to fears by the authorities that societal revolt might break out. The memories of 1919 were still fresh to the department of the attorney general, and, as economic conditions worsened, the department became concerned.

In some areas, the department's concern was fulfilled, as it soon became besieged with thousands of bankruptcy cases and complaints. The department was responsible for mediation of such cases, but the magnitude of the problem was much larger than ever before. The correspondence in the department's files illustrate the desperation of a society in near-chaos financially. Some creditors wrote Allen seven or eight times before the department was able to investigate

and respond. These cases alone forced the addition of several full-time and part-time workers to handle them, starting in 1930.

By 1933, the Depression had reached its lowest point. Four years of depression had so taxed the resources of the government and people that social disorder was beginning to rise. This was especially so among youth. It prompted the department to take action. Major issued a report in 1934 in which he described an increase in youth crime resulting from the influence of non-British populations. However, the increase may well have been a consequence of the change in the age of adulthood regarding juvenile offences to 18 from 16, in 1929. Nevertheless, reported crime was increasing every year, prompting Allen to investigate several community initiatives, such as building more playgrounds, playing fields and ice rinks to offer constructive activities to young people. The actions taken appeared to have some impact, as the department's annual reports recorded that youth crime levelled off after 1935 and declined after the outbreak of war in 1939.

In addition to troubled youth, the department kept a close watch on organized labour and groups it considered to be radical political organizations. Its primary concern was Communists. This is reflected in the voluminous files on Communist Party activities in the Provincial Archives of Manitoba. The department's concern was that in a difficult depression, people were losing faith in democracy and the capitalist system. The government feared that a large-scale movement toward socialism was taking place, and that deteriorating conditions might produce something like the events of 1919.

The department was also troubled by the extreme right. In 1933, the Nazi Party of Canada was formed. Although its activities were limited, its propaganda was not. The party put out a monthly newspaper, the *Nationalist*, and several copies found their way into Allen's hands. The file on the party suggests that the department regarded the party as more of a nuisance than a threat, although it disapproved of the Nazis' extreme anti-Semitism.

The Second World War

On September 1, 1939, Germany invaded Poland. Britain and France declared war on Germany September 3. Canada followed suit on September 10. The outbreak of war had been preceded by the signing of a non-aggression pact by Germany and the Soviet Union on August 24. This placed the Communists as supporters of Germany. Accordingly, the department increased its vigilance on their activities—even sending observers to their meetings. Its main contribution to the war effort was to protect against subversion of the war effort at home and it believed the Communists to be the primary subversion threat. The federal government banned the Communist Party in June 1940 under *The War Measures Act*.

The department had learned from its experiences in the First World War. The government depended heavily on the expertise of the deputy attorney general. Allen, who had witnessed reprisals taken against people of German and Austrian descent during the previous war, wanted to prevent similar incidents. The department warned the Manitoba Polish community that reprisals against people of German ancestry would be punished swiftly and severely. In 1940 the department initiated registration of all privately owned firearms in Manitoba in case a need to requisition them arose. During the war the department was very strict in the enforcement of wartime conservation regulations and there were many prosecutions for violations of rubber, oil and other rationing measures.

The Westgate Case: Imposition of the Death Penalty in a Notorious Case

The war did not keep serious crime out of public attention. On December 4, 1943, the body of a young girl named Edith Cook was found in the Marlborough Hotel in Winnipeg. There was controversy as soon as a suspect was arrested: he was Alfred Westgate, a convicted murderer who had been released from prison only six months earlier.[10] At a time when convicted murderers were often executed, to have a killer come out of prison and take another life was unforgivable.

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[10] *R v. Westgate* (1928), 51 C.C.C. 52 (Man. C.A.)

Manitoba's justice system came under siege, and the department was peppered with questions about Westgate's release. The department maintained that it was a judicial matter and out of its hands.

The trial was relatively short. The main players in the case were indicative of the stakes involved in the case. Sir Charles Tupper appeared for the accused, Westgate. A.A. Moffatt, K.C., who was the senior prosecutor with the department and was about to become the deputy attorney general, appeared for the Crown. Justice Major, who for 14 years had been attorney general in Manitoba before his appointment to the bench, presided at the trial. Westgate was convicted and sentenced on May 8, 1944. The date fixed for the execution was July 24th of that year.

An appeal to the Court of Appeal was quickly launched and argued on July 15 and 16.

At the opening of the appeal, counsel for Westgate asked for permission to call a witness to give evidence before the Court of Appeal. Noting that a request of this nature was highly unusual, the court nonetheless granted the request citing the serious nature of the crime of which the accused stood convicted. Three days later, on June 19, 1944, the Court of Appeal delivered its decision. All five members of the court agreed that the trial Judge's charge had been fair and that there was ample evidence to submit to the jury. Unanimously, the court dismissed the appeal.

The accused had about one month to live when a curious twist took the case in an unexpected direction. George Cook, father of the victim, instituted a civil action in the Court of King's Bench against Westgate. The statement of claim was delivered by the plaintiff's solicitor to the sheriff to be served on Westgate.

The sheriff, however, declined to grant the plaintiff access to Westgate while he was awaiting execution.

Several elements of the civil action were quite bizarre. First, the amount of damages sought - $100,000.00 – was quite extraordinary at the time. Second, it was clear that the case would never get to trial. Westgate was about to be

executed. It appeared that the victim's father sought to have his daughter's murderer examined for discovery, presumably to force him to publicly disclose what had occurred. Finally, when the statement of claim was issued, the plaintiff's solicitor came to the courthouse with a media photographer in tow evidently for the purposes of publicizing the event.

Clearly, the case was starting to take on a circus-like appearance. The sheriff referred the entire issue of service to the Chief Justice of the Court of King's Bench who heard the motion on July 18th.

Refusing to lend the court's assistance to the plaintiff, Chief Justice Robson noted: "I consider that the demand of $100,000.00, however based, is so excessive as to indicate a vindictive motive, and that it is putting it very moderately to say that the suit is vexatious. The object of the law is not vengeance."

The motion was dismissed. Several days later, on the 20th July, 1944, and only four days before the planned execution, the case was heard by a four-person panel in the Court of Appeal.

The reasons for judgment delivered by the court evidenced its frustration, if not hostility, towards the plaintiff and his objectives. Noting first that counsel for the plaintiff "showed a lamentable lack of preparation", the court questioned whether, from a purely practical point of view, the proceedings would be futile in the sense that counsel would not be in a position to conduct any examination for discovery before execution. Counsel then advised that he had applied to the Governor General and the Minister of Justice to postpone the date of execution.

On behalf of the court, Justice Bergman said: "This court cannot assume that they will accede to a request that is so utterly monstrous." Noting further that the defendant could simply refuse to be examined, as any attempt to punish him for contempt would hold no terrors for him, for he was already in jail, the court concluded its judgment with a rebuke.

"This case has every appearance of being a mere publicity stunt. It has from the start been carried on in a most undignified and unethical manner. The amount claimed by way of damages is so far beyond the bounds of reason as to have an

air of sensationalism about it. When the statement of claim was issued the plaintiff's solicitor brought with him a press photographer to take a photograph of him in the act of issuing the statement of claim. That photograph was obviously taken for the purpose of publication in the public press, and it was so published. This has been followed by frequent bulletins announcing the next move contemplated by the plaintiff's solicitor. I am not prepared to lend any assistance to these publicity stunts or to this attempted harassment of the defendant during his last hours on earth."

If one was to fast-forward 60 years into the 21st century, it is difficult to know if a court would be so dismissive of a victim's attempt, though ill conceived, to commence a civil action, and so supportive of a twice convicted murderer.

CHAPTER 5

Reform, 1945-1970

A Changing of the Guard

In March 1945, with the war in Europe in its last weeks, John Allen resigned as deputy attorney general after more than 31 years of service. From the beginning, Allen's contributions were prized both by his staff and the ministers he served and advised. He was one of the most important influences in the shaping of Manitoba's justice system. One of Allen's most remarkable achievements was his longevity, resulting from his ability to advise governments representing a variety of political views. He remained in the department as a special adviser and was succeeded by Andrew Allison Moffat.

Moffat was an excellent choice as deputy attorney general. A graduate of the Manitoba Law School, he joined the department shortly after completing his studies. His proficiency in his duties earned him the title of K.C. and a reputation among his peers of being extremely devoted to his work and one of the most thorough legal researchers in Manitoba. Unfortunately, Moffat stayed on as deputy attorney general for only five years. He subsequently joined Chief Justice Martin, Justice Choquette, Judge Forsythe, Joseph Sedgewick and H.J. Wilson as the commissioners who prepared the draft bill which resulted in the revision of the Criminal Code: 1953-54, Chapter 51.

As the war ended, many Manitobans feared a return to Depression conditions. This pessimism receded as the dismantling of war-based industry was offset by the resumption of peacetime operations. The department set out to focus on re-examining its post-war beliefs, methods and practices.

In corrections, for example, less emphasis was placed on punishment and more on prevention and rehabilitation. However, the pace of change was not always

determined by carefully made plans; sometimes it was spurred by violent confrontation. One such incident took place in 1946, in an unlikely place and in an unusual style.

The "Riot" in the Portage Jail and Corrections Reform

On April 14, 1946, the women prisoners at the Portage Jail staged an uprising—but this was a civilized riot, if ever there was one. The women started to throw assorted pieces of furniture out the windows. They stopped to allow the warden's wife to rescue her potted plants, which were becoming unintended victims of the aerial upholstery. The riot ended peacefully a few hours later with the women returning to their cells. Attorney General J.O. McLenaghen blamed the incident on an institutional oversight. Hardened criminals had not been segregated from the general inmate population. This explanation did not satisfy the press or public and further investigations took place. A year later, an unreleased 1946 report on the jail was leaked to the press. It documented substandard food and living conditions and described an outbreak of venereal disease that the medical staff was unable to handle. The report urged immediate action to curb abusive treatment by the guards. Little had been done to correct the problems and several prisoners had written to the attorney general with their own stories of mistreatment.

The press reports in April 1947 produced a deluge of negative comment about the department and the attorney general. In response, the department tried to improve conditions in the jail by examining the food and health services and improving the library and exercise facilities.

Unknowingly, the women in the Portage jail helped to trigger an era of important corrections reform. The department was already engaged with the issue of improving correctional facilities for young offenders. In 1944 the American Public Welfare Association had been asked to examine juvenile facilities and make recommendations for improvement. Its report, dated September 1944, was a far-reaching study of juvenile crime and punishment in Manitoba and the findings were disturbing. The juvenile courts were deemed satisfactory, but the rest of the juvenile justice system was judged to be sorely deficient. The report stated that

corrections facilities, especially the Carman Home for Boys, "concentrated too highly upon punitive measures," instead of on rehabilitating the offenders. It suggested that the rate of recidivism could be reduced by more social work within that institution.

In the post-war years, juvenile crime was a major concern for the department. From 1945 to 1950 the rates of youth crime rose substantially. The most disturbing factor was that most of the offenders were repeat offenders. In the aftermath of the Portage riot, local organizations began to urge the government to institute reforms to curb youth crime. The Social Agencies of Greater Winnipeg published a pamphlet, *Youth Needs in Winnipeg*, which called for job initiatives, better libraries and the construction of hockey rinks, swimming pools and playgrounds. The pamphlet suggested the increase in juvenile delinquency was the result of society's failure to meet the needs of young people, not a faulty court system. In response to the reports and public pressure, the department substantially improved Manitoba's juvenile corrections facilities.

The Beginnings of Legal Aid

Among the most significant changes in the post-war years was the introduction of government-sponsored legal aid in Manitoba. Before 1948, many poor Manitobans could not afford to have a lawyer in court and were faced with battling an experienced prosecutor or pleading guilty. Many had to do the latter, but others chose to defend themselves, usually with poor results. In the 1930s, the Law Society of Manitoba decided that a system that equated legal representation with wealth was not a just system. The society therefore endeavoured to change it. It advocated a program of government-sponsored legal aid, under which lawyers would be provided at no cost to defend persons who could not afford private counsel. These suggestions were noted by the department, but nothing was done. In response, the society introduced its own system of free legal aid to the indigent. Although the program was well-intentioned, it was underfunded and overworked from its early stages. It became increasingly clear that only the government had the resources to bring about a solution.

After the end of the war, the Law Society again urged legislation. This time, their lobbying fell upon friendly ears. Both McLenaghen and Moffat solicited opinions from the other provinces, the United States and Britain, asking about their legal-aid systems' operations and costs. The department showed considerable interest in the issue, tempered with caution over introducing a system of public defence. From across Canada, the replies stated that no government-run legal aid existed. Several provinces stated there had been discussions about establishing such a system, but none had gone beyond that stage. New York State sent a comprehensive description of the American public defender system. Several newspaper editorials demanded introduction of some kind of legal aid and the *Winnipeg Tribune* placed its views on the front page. Although the department took account of these views, it still balked at the idea of implementation. In response to these expressions of public opinion, however, the government started to compensate lawyers who took on legal aid cases. This was the first attempt at any kind of publicly funded legal aid in Canada--though on a very small scale. Manitoba led the country in this field in 1948, and it was not the last time that the department had to deal with the legal aid issue.

The Wardle Mineral Rights Case

During the Depression, farmland in Southwestern Manitoba was subject to drought and severe soil erosion. The provincial government set up the Manitoba Farm Loans Association in response to the dire straits in which many farmers found themselves. The government made loans to farmers to help them to survive, taking over ownership of their lands in return. When farmers' economic and financial situations improved, they could buy back their land, however, the government retained the mineral rights under *The Crown Lands Act*.

In the late 1940s, oil was discovered in the Virden area. This thrilled area residents, particularly the farmers, who looked forward to enjoying royalties from petroleum production. Many entered into negotiations with oil companies. An uproar ensued when farmers, whose lands had been in government hands, realized that the royalties would go to the government. The matter went to court in the case of *Wardle v. the Manitoba Farm Loans Association and the Government of Manitoba*.

The department and government took the position that, under *The Crown Lands Act*, land ownership did not include underground mineral and exploration rights. Justice E.K. Williams of Court of Queen's Bench ruled that the act did not apply to transfers of land through the Manitoba Farm Loans Association; hence the oil rights belonged to Wardle. In response, the case was taken to the Court of Appeal. Besides invoking *The Crown Lands Act*, the government now argued that Wardle's suit was invalid because, under *The Limitation of Actions Act*, actions disputing land transfers involving the government had to be filed within 10 years of the transaction. The court agreed and reversed the earlier decision. However, the Wardle case then went to the Supreme Court of Canada. This time, the only question before the court was the ownership of the mineral rights. In 1955, the Supreme Court, with two judges dissenting, awarded the rights to Wardle.

Riots at Headingley Jail

Two riots at Headingley jail challenged the department's leaders in 1954 and 1955. On December 18, 1954, Headingley inmates became unruly during dinner and a riot developed during the evening. The dining room was in ruins, with chairs and tables destroyed, dishes smashed and fires set. Although no one was injured, the riot was regarded as very severe.

Newspaper reports described poor medical and dental services at the jail, bad food, idleness and an under-supplied library. As a result, the department was inundated with questions: why prisoners suffering from alcohol and drug abuse were not receiving treatment; and why prisoners were not being given constructive work. The department said that the riot was caused by failure to separate first-time offenders from hardened criminals and that hostility erupted when the two groups mixed. Thirteen men were charged with a variety of offences and a full-scale investigation was launched.

In February 1955, Attorney General Ivan Schultz was appointed to the Court of Queen's Bench, and his successor, Nicholas Hryhorczuk, tried to restore confidence in the prison system by taking some MLAs and reporters on a tour of Headingley. Despite such efforts, frequent newspaper editorials kept the

controversy alive. The report of the inquiry into the riot made many recommendations concerning prison conditions. It also urged a comprehensive provincial crime-prevention program, to be undertaken with the participation of a wide range of professional, business, labour and other community organizations. The department implemented many of the recommendations. It also accepted an offer from the Salvation Army for a full-time chaplain to be assigned to the prison, to act as spiritual counsellor and an ombudsman through whom the inmates could air grievances. However, a second, though much smaller, riot occurred on August 12, 1955, reviving feelings of crisis in the Manitoba penal system.

Duff Roblin, Sterling Lyon and Stewart McLean

Sterling R. Lyon

In 1958, the Liberal-Progressive government, which had led the province under several names and forms since 1922, was defeated by Duff Roblin's Progressive Conservatives. Roblin's caucus was made up mostly of young and ambitious politicians. One of its youngest members was Sterling Lyon, who was appointed as the new attorney general. Raised in Portage la Prairie, Lyon attended United College and the Manitoba Law School. After his graduation, he articled with and worked for the department of the attorney general as a junior counsel. Only a few years later, he was in charge. This must have created quite a stir in the department and was a reversal of position for Deputy Attorney General O.M.M. Kay, who had recently been Lyon's boss. Now Lyon was his.

The Roblin administration undertook sweeping reforms that modernized Manitoba. In health care, education and projects such as the construction of the Greater Winnipeg Floodway, the government's changes touched every part of

Manitoba society. One of the most overlooked reforms undertaken by Lyon and the department was the creation of the Manitoba Law Reform Commission in 1963. The purpose of the commission was to ensure that Manitoba law did not become static and outdated. Lyon believed it was the responsibility of the legal community to examine the laws and constantly look to improve them. The commission was essentially an arena for the debate of legal thought in the province and an organized and civil way to advise the department of changes needed in the law.

In 1963, Lyon was succeeded by Stewart McLean, a Dauphin lawyer. Born in Dauphin in 1913, McLean graduated from the University of Saskatchewan School of Law in 1938. During the Second World War, he worked for the federal government in Ottawa. At the war's end, he returned to Dauphin and was elected mayor in 1955. Elected to the Legislature in 1958, he became Roblin's Minister of Education. As attorney general, McLean faced one of the department's central issues of the 1960s: how to provide adequate legal aid to poor Manitobans.

The initial government support of legal aid in 1948 created a short period during which the Law Society and the government saw eye to eye on the issue. By the early 1950s, however, the Law Society was demanding more funds for the program. The creation of the Law Reform Commission gave Manitoba's legal community a voice to air their concerns. When McLean took office, criticism of the department for its lack of response to the legal aid issue was increasing. Some members of the legal community were calling for the establishment of a full-time public defender whose services would be provided free, with the government bearing all of the costs.

McLean made clear his views on a public defender. He told the *Winnipeg Tribune*: "The greatest protection for the accused is an independent lawyer...the public defender idea is advanced by well-meaning people who do not realize the inherent dangers (of the system)." In the same interview, he said: "If I were an accused, I would not go near a public defender for anything." The Law Society advocated their cause with equal vigour, responding with the contention that Manitoba "has a Model T administration in a jet age." The verbal battle intensified in 1966, when Lyon once again became attorney general.

This time, Lyon did not ride a wave of popularity into office, but instead walked into a firestorm. McLean's comments on government-sponsored legal aid, and his staunch opposition to a system of public defence, precipitated a war of words between the department and the Law Society. Lyon seized on the issue, with the intention of making an acceptable compromise. However, in 1968, the Ontario government introduced a publicly funded legal aid system and the Law Society demanded that Manitoba follow suit. This time, the media, which had generally remained neutral, supported the Law Society. Lyon was forced to come up with a proposal and in 1968 he announced that $125,000 would be earmarked for the reimbursement of lawyers providing legal aid. Despite this, however, the Law Society was not satisfied and called for a large increase in funds for the program. Lyon's department was reluctant to agree and the dispute continued.

In 1969, Premier Walter Weir called an election, confident that his Conservatives would win another majority. To their chagrin, the New Democratic Party surprised the province and gained power. With the installation of a government eager to devote public funds to solve social ills, the legal aid issue was soon resolved. The attorney general, Alvin Mackling, acted to set up a more comprehensive system of legal aid for poor Manitobans.

The post-war era was a challenging period for the department of the attorney general. After coming through a period of serious strife, the department cleared away the burdens of war and reformed the Manitoba justice system in several key fields. Most notable were jail practices and the institution of a system of legal aid. These reforms did not come without a price, however. In several cases changes were made in response to crisis facing the department and attorneys general. Fortunately, the high calibre of department staff made it possible to turn these incidents and periods of strain into positive change.

CHAPTER 6

Conclusion

In the early days of Manitoba, men like Archibald and Clarke worked--even when bitterly opposing one another--to create a system of justice that would serve and bring law to the new province. Governments and attorneys general faced the challenge of enacting and administering laws that would accommodate a diverse community whose different elements did not always get along. Tensions between the old residents and new settlers--and English, French and Metis--were a constant concern for government in the first years after Manitoba entered Confederation. However, Clarke and Archibald, followed by Lieutenant-Governor Morris and Premiers Davis and Norquay, defused many potentially explosive situations.

Their work built a fine foundation for later administrations and the department of the attorney general, established under Norquay in 1885. The rapid growth of the province up to the First World War saw Manitoba become the economic and social centre of activity in the Western Prairies. Winnipeg became the third-largest city in Canada and the "Gateway to the West". The department undertook enormous amounts of work to help manage the justice system. However, in the 1890s, it was also drawn into the quagmire of the Manitoba School Question, which bogged down the entire government for six years and re-opened old bitterness between French and English-speaking Manitobans.

As the 20th century began, the department under Colin Campbell entered the field of social issues, through Campbell's crusade against the evils of alcohol. The process leading up to the referendum on prohibition in 1902 showed the department's and government's respect for public opinion. A few years later, Campbell's reforms of the courts and his creation of Canada's first juvenile court resulted in a much more efficient justice system in Manitoba. Unfortunately, after his resignation in 1911, the department did not have the same quality of leadership. The scandal of the construction of the Legislative Building and Law Courts was a low point for its staff. Fortunately, men like John Allen, who had

recently joined the department, were appointed to senior positions and took the department forward again.

It has been said that society changed more in the years between 1914 and 1918 than it has changed since then. The societal upheaval that followed the First World War caught almost all facets of society unprepared and Manitoba was no exception. This led to difficult times and crisis, the most outstanding example being the Winnipeg General Strike. It seems clear that the department considered the strike to be a revolution in the making and treated the leaders accordingly. In the 1920s, the department again engaged in the Prohibition issue. It wisely decided that regulation, rather than prohibition, was a better solution. As the post-war economic depression receded, the department enjoyed some rare years of serenity. In the 1930s a sharp increase in bankruptcies resulting from the Great Depression taxed the department's slender resources. Mired in the misery of the Depression, many people looked to extremist groups on the right and left for solutions mainstream political parties seemed unable to offer. The apparent economic successes of Hitler's Germany and the Soviet Union under Stalin increased the attraction of such movements. The department carefully chronicled the activities of these groups and prepared to intervene if necessary.

In the early 1930s the government and Attorney General Major were embroiled in the Stubbs controversy. Although they accepted the independence of the judiciary, they believed that Stubbs had crossed the limit of proper behaviour. The controversy suggests that there was something admirable about both Stubbs' crusade and his opponents' desire to keep the judiciary out of politics.

After the outbreak of war in 1939, the department had to change its orientation to the necessities of the defence of Canada. The department was instrumental in leading Manitoba's participation in the war effort and civil defence preparations.

In the aftermath of war, a period of prosperity allowed the department to engage in several reform initiatives. The disturbance at the Portage Jail for Women in 1946 resulted in efforts to reform the prison system and shift the emphasis from punishment to rehabilitation. There were also efforts to reform the juvenile justice system, again with the intent of teaching and rehabilitating instead of unsuccessful punitive measures. The department again faced controversy over the prison

system when Headingley Jail prisoners rioted in 1954. The riot was a surprise and a disappointment to the public. It discouraged prison and departmental staff, but strengthened the department's work to make the jails more humane.

Along with reforms witnin the department, strong community forces were lobbying the government for change. The most outstanding example came during the efforts to introduce free legal aid for poor Manitobans. The first attempts of the Law Society of Manitoba to achieve legal aid had been made in the 1930s, but the bulk of the society's efforts came in the 1960s. Led by Attorneys General Stewart McLean and Sterling Lyon, the department considered how to proceed, and prepared a plan that the government introduced and implemented. The department entered the 1970s poised for the challenges of a new period and cemented legal aid as a permanent feature of Manitoba's legal system.

The one constant theme throughout this historical sketch is continuity. Although justice may be blind, people expect the justice system to be all-seeing and responsive. It is appreciation of that fact that has underscored the work of generations of members of the department of the attorney general. From its earliest days, the department learned and profited from its experiences. The achievements and things that worked were recorded. More important, during times of difficulty, the department did not ignore problems but tried to remedy them. It continues on this path of improvement today and to respond to the need to reform the justice system. For this, Manitobans should be thankful to those who have devoted their lives to the administration of justice in our province. Their legacy is worthy of preservation; their memory is a cherished part of our past; and their integrity is the best hope for our future.

APPENDIX A:

Attorneys General of Manitoba, 1870-1973

1871 – 1874	Henry J. Clarke
1874 (August-December)	Joseph Dubuc
1874 – 1878	Joseph Royal
1878 – 1882	David M. Walker
1882 – 1883	Alexander M. Sutherland
1883 – 1885	James A. Miller
1885 – 1888	Charles E. Hamilton
1888 – 1891	Joseph Martin
1891 – 1896	Clifford Sifton
1896 – 1900	J.D. Cameron
1900 (January- October)	Hugh John MacDonald
1900 – 1911	Colin H. Campbell
1911 – 1915	James H. Howden
1915 – 1917	Albert B. Hudson
1917 – 1922	Thomas H. Johnson
1922 – 1927	Richard W. Craig
1927 – 1941	William J. Major
1941 – 1950	James O. McLenaghen
1950 – 1952	C. Rhodes Smith
1952 – 1955	Ivan Schultz
1955 – 1958	Michael N. Hryhorczuk
1958 – 1963	Sterling R. Lyon
1963 – 1966	Stewart E. McLean
1966 – 1969	Sterling R. Lyon
1969 – 1973	Alvin H. Mackling

APPENDIX B:

Deputy Attorneys General, 1885-1970

(since the establishment of the department in 1885)

1885 – 1886	L.W. Coutlee
1886 – 1904	No information available
1904 – 1911	George Patterson
1911 – 1913	Robert Blackwood Graham
1913 – 1945	John Allen
1945 – 1950	A.A. Moffat
1950 – 1965	O.M.M. Kay
1965 – 1968	Gordon Pilkey
1968 – 1970	W.J. Johnston

Cutlines

Deputy Attorney General John Allen. Provincial Archives of Manitoba (PAM)

Attorney General Henry J. Clarke. PAM

Attorney General Colin Campbell. PAM

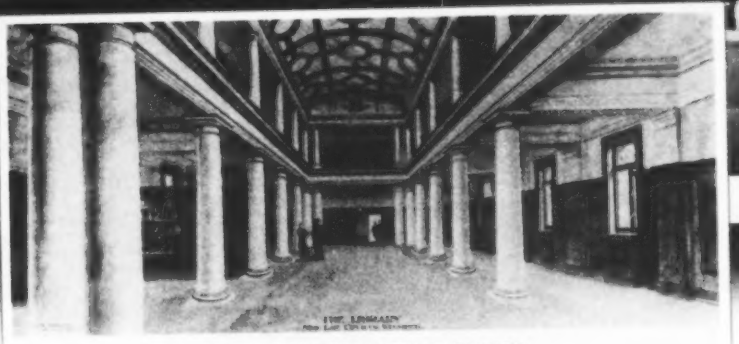
Attorney General William J. Major. PAM

Attorney General Sterling R. Lyon. PAM

Example of Communist literature kept in files.

One of many advertisements during the Prohibition debates.

Editorial cartoon demanding penal reform. *Winnipeg Tribune*, March 27, 1947.



THE LIBRARY, NEW LAW COURTS, WINNIPEG